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09/002,133	12/31/1997	PODUTOORI RAVINDER REDDY	97-0461-LIP	7481
201	7590	10/15/2003	EXAMINER	
UNILEVER PATENT DEPARTMENT 45 RIVER ROAD EDGEWATER, NJ 07020			PADEN, CAROLYN A	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 10/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

This is in response to the appeal brief filed August 29, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 11-26 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,652,011	Heertje et al	7-1997
5,202,146	Singer et al	4-1993

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 11-26 are rejected under 35 U.S.C. Heertje in view of Singer. This rejection is set forth in prior Office Action, Paper No. 8/29/2003.

Heertje discloses low fat spreads and dressing that contain mesomorphic phases with fat, biopolymers and edible surfactants. At

example 6, combining the mesomorphic phase and the aqueous phase in a 1:1 ratio forms the spread. The mesomorphic phase is formed into a homogeneous viscous mixture that has an egg white-like consistency, which is cooled and sheared at 5^oC. The aqueous phase is formed from gelatin into a slurry of gelled particles. This phase has a flavor of less than 0.0048%. These two phases are then combined together and a spread is then finally formed. At example 5, a mesomorphic phase is combined with a biopolymer phase that contains fat. The fat in Heertje is specifically defined at column 5, lines 29-42 to include triglycerides. The claims appear to differ from the reference in the recital of the use of a lipophilic flavor. Singer teaches a lipophilic flavor delivery system for non-fat and low fat foods. The product is seen to be lipophilic because it contains flavor-filled fat globules. The product in Singer is designed to be used in products in which the fat components have been replaced by non-lipid fat substitutes so that a natural taste impression of conventional full fat foods is obtained. It would have been obvious to one of ordinary skill in the art to utilize the flavor delivery system of Singer in the spread of Heertje in order to enhance the flavor of the product without adding a lot of fat to the product. In this case the fat substitutes in example 6 are the non-fat ingredients

(note example 5, by comparison, wherein fat is present and has been substituted into the product relative to example 6). Claim 1 in Heertje teaches the full ranges of fat, biopolymer and surfactant that are set forth in the claims.

(11) Response to Argument

Appellant argues that there is no suggestion in Singer that their flavor components could be used in the biopolymers of Heertje. This argument has been considered but is not persuasive for the following reasons. First, the rejection is not based upon Singer in view of Heertje. The rejection is based upon Heertje in view of Singer. The secondary reference is clearly a flavor delivery system and not fat globules alone. Second, Heertje utilizes flavors in the biopolymer gel phase in example 6. The prior art recognizes the use of flavors in general in the biopolymer. With the references before him, one of ordinary skill in the art would have been led to the use of the Singer flavor system because of its flavor enhancement in low fat foods.

Appellant argues that absent the teaching in each reference one of ordinary skill in the art would not have been led to combine the Singer flavors with the gel phase of Heertje. The suggestion of combining one reference with another does not have to be expressly stated in the primary

reference. The suggestion of combining the reference may be in either reference (note MPEP 2143.01). In this case the secondary reference provides the motivation for the combination of the reference. Singer teaches that fat is important in flavor perception and provides a flavor delivery system for low fat foods the teaching in each reference, one of ordinary skill in the art would not have been led to combine the Singer flavors with the gel particles of Heertje. Appellant also argues that there is no teaching in Singer that their flavor system would work is in the product of Heertje. This has been considered but is not persuasive. Appellant has not provided any evidence to show that the flavor product of would not act to flavor the product of Heertje. The Singer flavor is a dairy-like flavor and is stated to be useful in spreads (column 3, line 45). Heertje also is directed to products that include spreads. Because both of the references are directed to the same product, there is not reason to expect that the flavor of Singer would not work to flavor the Heertje spread.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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10-8-03



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October 8, 2003

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